

# **Fair Housing 101**

## **Basic Concepts and Strategies**

*for Tenants and Tenant-Advocates*

**Where a person comes from, what he looks like, if and how a person worships, who he loves, whether he has children, and any disabilities a person may have**

**should NOT  
influence where he  
can live...**

# Fair Housing Laws Apply:

- In sober living homes
- In transitional living housing programs
- In subsidized housing
- In residential motels
- In private, non-subsidized multi-family and single family residences
- In emergency shelters\*

# OVERVIEW OF FAIR HOUSING LAWS

## Federal:

### Fair Housing Amendments Act of 1988

Evolved from the Civil Rights Act of 1968, signed shortly after the assassination of Martin Luther King, Jr., in part as a tribute to his service to the nation. Currently prohibits discrimination in housing based on **race, color, religion, sex, national origin, disability or family status**.

## California:

### Fair Employment and Housing Act

Created in 1980 when state combined employment and housing laws enacted in 1959 and 1963 respectively. Currently prohibits above, plus **marital status, ancestry, sexual orientation, gender, gender expression and identity, genetic information, source of income**.

### Unruh Civil Rights Act

Currently prohibits many kinds of discrimination in housing, including discrimination based on **age**.

# In California, the Law Prohibits Discrimination Based on:

- Race
- Religion
- National Origin
- Color
- Sex
- Gender, gender-identity and expression
- Marital Status
- Ancestry
- Family Status
- Mental and Physical Disability
- Sexual Orientation
- Source of Income
- Genetic Information
- Age

# Landlord May NOT Enforce Immigration Laws

Landlords and apartment managers may not ask anyone for proof of citizenship or request information about citizenship or immigration status.

*CA Civil Code 1940.3*

(Government housing programs subject to different rules.)

# Landlords ARE ALLOWED\* to Discriminate on the basis of:

- Bad credit
- Prior evictions/poor tenant history
- Criminal background checks
- Minimum income requirements
- Current illegal drug use

as long as these standards are applied to

ALL APPLICANTS EQUALLY

# Common discriminatory, illegal remarks:

---

- “I don’t rent to families with small children on the second floor.”
- “Please don’t let any of the other tenants know where you are from.”
- “You need a separate bedroom for a boy and a girl.”
- “Are you two married?”



# Signs of Possible Discrimination:

- A unit advertised as available is suddenly “already rented out” once the landlord meets prospective applicant.
- Unit is available when a friend with a different accent calls, but suddenly rented out when original applicant calls.
- Landlord inquires as to applicant’s ancestry, national origin, or religion, especially if she then comments that the unit is taken, or the terms of the lease (rent, deposit, amenities) are suddenly described in terms less attractive than original description.

## Examples of Discrimination by Landlord:

- Suggesting that applicant might be more comfortable somewhere else.
- Requesting social security numbers from only applicants with foreign accents, or a specific ethnicity.
- Requesting that tenant remove a religious head-covering when on premises.
- Requiring a higher security deposit after finding out tenant has been in a psychiatric hospital.

# Common Fair Housing Violations Related to Mental Disability

- A landlord should not evict (or run out) a tenant because he has found out about the tenants' psychiatric history
- Landlord has no right to demand to know what medications a tenant is taking, or what diagnosis he has, and must not share any information about disability with other tenants.

# Disability Defined (in California)

- A mental or physical impairment that limits a major life activity
  - Makes that activity difficult
  - Major Life Activity includes: mental, physical and social activities, as well as working
  - Examples: depression, alcoholism, schizophrenia, blindness, HIV/AIDS, multiple sclerosis

# Alcoholism vs. Addiction to Illegal Drugs

## DISABILITY

- Current alcoholism
- Past alcoholism
- Past drug addiction

## NOT DISABILITY

- Current illegal drug use

# What is “Fair” in Fair Housing?

Race, color, religion, sex, gender, gender identity and expression, national origin, family status, marital status, sexual orientation, ancestry source of income, genetic information, and arbitrary characteristics

Everyone should be treated the same

Mental and Physical Disability

People with disabilities should be treated the same, **UNLESS** to do so would effectively bar access

# “I Need an Emotional Support Animal But My Landlord Says ‘No Pets’”

- Emotional support and other assistance animals are NOT pets.
- May not charge “pet deposit” for emotional support or other assistance animal.
- Landlord may request letter from medical professional or social worker confirming disability and need for animal.\*



# **“I Committed a Violent Act While Changing Medications”**

- Tenant may ask for a reasonable accommodation to avoid eviction.
- Tenant will likely need a letter from mental health care provider/social worker confirming incident was related to disability.
- Must explain why violence occurred and provide a plan to prevent it from happening again.



# Other Common Reasonable Accommodations

- Live-in aide (in subsidized housing)
- Adjustment of rent due date
- Parking space closer to entrance
- Accepting alternative references from applicant whose disability means he has no tenant history
- Alternative chores (in emergency shelters)
- Permission to stay indoors during the day at night-only shelters

# Reasonable Accommodation

- **A change in rules to help a person with a disability access housing or housing-related services**
  - Must be necessary due to disability
  - to provide person with a disability equal opportunity to housing    **AND**
  - Must not pose an undue administrative or financial burden, or fundamentally alter the nature of the program

# Necessary Due To Disability: Nexus

- Must be a nexus between the accommodation and the disability
  - “My disability makes contact with other people extremely frightening, I would like permission to enter and exit through side door of building instead of main entrance, to minimize contact.”
  - NOT, “My disability makes it impossible to climb stairs, I would like permission to paint walls pink.”

# Accommodation requests are NOT “Reasonable” if they pose:

- An “Undue Burden” – too difficult or expensive for landlord to provide
  - Landlord can’t be expected to expose tenants to fire hazards or noxious odors to accommodate hoarding tenant
- A “Fundamental Alteration in the Nature of the Program” – alters the essential nature of what the establishment offers; may undermine main purpose
  - Sober living home provider isn’t expected to allow alcohol
  - Landlord can’t be expected to walk and clean up after emotional support animal

# Direct Threat Exception

- Provider does not have to make housing available to anyone who poses a current direct threat to the health and safety of others, or whose tenancy is likely to result in substantial damage to the property of others.
  - Threat must be real, not based on conjecture.
  - Must attempt reasonable accommodation, is possible.

# Reasonable Accommodation: An Interactive Process

If a housing provider refuses a request for an accommodation because he thinks it is not reasonable, he needs to invite discussion with the tenant about any alternative accommodations that would address the tenant's disability-related needs. Landlord **MUST** work with tenant to explore options.

# Reasonable Modification

- A structural change to the building to allow a person with a disability full use the housing.
- Includes interior and exterior of dwellings, as well as common areas.
- Must be nexus between disability and requested modification, and must be reasonable.
  - Widening doorways to make rooms more accessible for people using wheelchairs
  - Installing grab bars in showers
  - Lowering kitchen cabinets

## Reasonable Modifications, cont.

- Tenant must pay for a reasonable modification,\*
- If disability/need is not obvious, landlord may request verification.
- Landlord may demand that tenant put money into an interest-bearing account, to restore unit to previous condition if modification could interfere with next tenant's use.
- Modifications must be installed correctly and in compliance with applicable codes.



# Requests for Reasonable Accommodation and Modifications

- Tenant must request the accommodation or modification.
  - Best to request in writing; keep a copy of request.
  - May need letter verifying disability and need for accommodation from healthcare or service provider.
- Landlord may not impose an unwanted accommodation.
- May make request anytime.
  - During application, tenancy or eviction.

# Privacy and R.A./R.M. Requests

- Housing provider may NOT request medical records, diagnosis, independent evaluation, etc.
- Housing provider may NOT share information about disability with anyone else without tenant's permission.

# General Advocacy Tips

- Keep written notes of important incidents.
  - Hold on to useful documentation also.
- Be persistent, but not pushy.
- Recognize our own obligations and the concerns of the others